REMARKS/ARGUMENTS

Favorable reconsideration of this application, as presently amended and in light of the following discussion, is respectfully requested.

Claims 37-43, 45-54, 56-65, 67-69 and 97 are pending in this application. Claims 44, 55 and 66 are canceled without prejudice or disclaimer. Claims 37, 48, 56, 58-65 and 67-69 are amended. Claim 97 is added by the present amendment.

Amended Claims 37, 48, 56, 58-65 and 67-69, and new Claim 97 are fully supported by the specification, drawings and claims as originally filed. Specifically, support for the additional recitations in amended Claim 37 is found in the present specification at page 77, lines 9-13, page 78, lines 13-16, page 79, lines 12-19, and Figs. 46 and 47, for example. Independent Claims 48 and 59 are amended and supported similarly to Claim 37. Further, independent Claim 59 is amended to remove means plus function recitations. New independent Claim 97 includes features substantially similar to Claim 37 without means plus function recitations, to thereby preclude the application of 35 U.S.C. §112, sixth paragraph. Moreover, Claims 37, 48, 56, 58-65 and 67-69 are amended to correct minor informalities; to clarify subject matter recited; and to better comply with U.S. claim drafting practice. Applicants therefore submit that no new matter is introduced.

In the outstanding Office Action, Claims 37-69 were rejected under 35 U.S.C. §103(a) as unpatentable over Logan et al. (U.S. Patent No. 5,721,827, herein "Logan") in view of Hammons et al. (U.S. Patent No. 6,477,509 B1, herein "Hammons").

Applicants respectfully traverse the above-noted rejection by the present amendment.

Independent Claim 1 is directed to an apparatus for determining a refund and amended to now recite as follows:

> calculating means for calculating *a refund quantity to be*
> *earned by the content creator as a function of a number of*
> *transmissions of the selected content data and whether the selected*
> *content included advertising data*;

storing means for storing and *accumulating the refund quantity
for the content creator* in a content creator information database; and
determination means for determining which of a plurality of
levels of an entitled refund *the refund quantity accumulated for the
content creator* translates to, the plurality of levels of an entitled
refund including a fee credit and merchandise.

According to the present invention recited in Claim 37, the refund quantity is to be

earned by the content creator; calculated based on a number of transmission of the selected

content data and whether the selected content included advertising data; and accumulated for

the content creator in the content creator information database. Because the apparatus

determines a refund for the content creator taking into account the refund quantity

accumulated, the content creator is properly compensated at the end of a predetermined

period of time in the form of the refund for the transmission of adverting data included in the

content data created by the content creator.[1]

With respect to the rejection based on the combined teachings of <u>Logan</u> and

<u>Hammons</u>, Applicants respectfully submit that neither <u>Logan</u> nor <u>Hammons</u> teaches or

suggests that calculating means calculates *a refund quantity to be earned by the content

creator as a function of a number of transmissions of the selected content data and whether

the selected content included advertising data*; that storing means stores and *accumulates the

refund quantity for the content creator* in a content creator information database; and that

determination means determines which of a plurality of levels of an entitled refund *the refund

quantity accumulated for the content creator* translates to, as recited in Claim 37 as currently

written.

In this regard, <u>Logan</u> describes as cited in the Office Action at column 9, line 51 to

column 10, line 5 as follows:

Because a subscriber may have a particular interest in or enjoy
some advertising, and may have a particular dislike for other specific

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[1] See the section titled "(8) Monthly Point Settlement Processing" in the present specification at page 75, line 14
through page 82, line 11.

advertising, the user may advantageously be presented with a listing of advertising organized by advertiser and subject, providing the subscriber with the opportunity to select additional desired advertising on the list while suppressing others. Since the voluntary acceptance of advertising preferably reduces the programming charge to the subscriber, the utility program which executes on the client CPU 105 to enable program and advertising selection, sequencing and editing preferably provides an advisory indication to the subscriber of the charges or credits to be accrued if the currently programmed sequence is played. *This feature enables subscribers to better control the costs of the service by accepting sufficient advertising content to reduce the subscription cost to an acceptable level.* Subscribers may also set a player system variable to a value indicating the subscription costs per unit time that the subscriber is willing to accept, and the player 103 can then automatically insert advertising segments between program segments in sufficient quantity to achieve a net charge at the desired level.

Thus, a refund in <u>Logan</u> is to be earned by the subscriber (i.e., viewer) who subscribes content data including advertising data, and is provided to compensate the subscriber for viewing the advertising data. Such a refund in <u>Logan</u> is to be given at the time the programmed sequence is actually played by the subscriber. Therefore, contrary to the present invention recited in Claim 37, the refund in <u>Logan</u> is not to be earned by the content creator who provides the subscriber with content data including advertising data, and is not to be accumulated for the content creator in the content creator information database.

Further, <u>Logan</u> describes as cited in the Office Action at column 19, line 63 to column 20, line 23 as follows:

The Duration field of the Program_Segment record specifies the duration of the program segment expressed in seconds. The Plays field is an accumulator field which is incremented by incoming Usage_Log records to reflect the total number of times a given program segment has been actually played by all subscribers. Similarly, the TotalTime value represents the total time a given program segment has been actually played by users. Together, *these records can be used to determine the advertising fee due from the advertiser, or royalty amount payable to the content provider (the advertiser or content provider being specified the ProviderID field) for the use of this segment.*

Thus, contrary to the present invention recited in Claim 37, the record in <u>Logan</u> is provided not to calculate the refund quantity to be earned by the content creator to compensate for the transmission of advertising data included in the content data created by the content creator.

Turning now to <u>Hammons</u>, <u>Hammons</u> is directed to an Internet marketing method and system and describes as follows:

> ... The funds thus received from the investor are used to *provide a viewing incentive for one or more of the system users*. This incentive could be in the form of providing a form of internet currency or credit to the system user, *so that the system user could use this credit* to purchase goods or services from advertisers or vendors on the network.[2] ...

> ... The method or system also *receives from the system user a commitment to view targeted information for a period of time*. This commitment could take the form of for instance, a commitment to view targeted information for a period of twelve months. The targeted information would be presented to the system user on his computer screen. It would be displayed along one or more sides of the computer screen so that the majority of his computer screen is still available for use with whatever application he chose to use, and the targeted information would be visible along the margins.[3] ...

Thus, the viewing incentive in <u>Hammons</u> is to be provided to the system user for viewing adverting data to compensate for a commitment to view advertising data for a period of time. Contrary to the present invention recited in Claim 37, the viewing incentive in <u>Hammons</u> is not to be provided to the content creator to compensate for the transmission of advertising data included in the content data created by the content creator, and not to be accumulated for the content creator in the content creator information database.

Accordingly, the cited references of <u>Logan</u> and <u>Hammons</u>, either taken individually or in combination, do not teach or suggest all of the limitations recited in Claim 37. Even considering the two references of <u>Logan</u> and <u>Hammons</u> together, only the present

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[2] See Hammons at column 2, lines 12-18.
[3] See Hammons at column 2, lines 38-48.

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specification teaches the features of amended Claim 37 in which calculating means calculates *a refund quantity to be earned by the content creator as a function of a number of transmissions of the selected content data and whether the selected content included advertising data*; storing means stores and *accumulates the refund quantity for the content creator* in a content creator information database; and determination means determines which of a plurality of levels of an entitled refund *the refund quantity accumulated for the content creator* translates to.

Therefore, Applicants respectfully request the withdrawal of the rejection of Claim 37.

Amended independent Claims 48 and 59, and new independent Claim 97 are considered allowable at least for the reasons advanced for amended Claim 37 to the extent that the claims include features substantially similar to those recited in amended Claim 37.

Dependent Claims 38-43 and 45-47, 49-54 and 56-58, and 60-65 and 67-69 are considered allowable at least for the reasons advanced for Claims 37, 48 and 59 from which they depend, respectively.

As no other issues are pending in this application, it is respectfully submitted that the present application is now in condition for formal allowance, and it is hereby respectfully requested that this case be passed to issue.

Respectfully submitted,

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